IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13440 of 2006
With
SPECIAL CIVIL APPLICATION No. 13441 of 2006
To
SPECIAL CIVIL APPLICATION No. 13445 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ASHOK VASANTLAL MEHTA & 5 - Petitioner(s)
Versus
STATE OF GUJARAT & 10 - Respondent(s)

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Appearance :
MR AN PATEL for Petitioner(s) : 1 - 6.
MR SATYAM CHHAYA, AGP for Respondent(s) : 1,
DS AFF.NOT FILED (N) for Respondent(s) : 1 - 2, 7,
MR VIMAL M PATEL for Respondent(s) : 3 - 6, 8,
MR JOY MATHEW for Respondent(s) : 9 - 10.
UNSERVED-WANT OF TIM for Respondent(s) : 11,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 16/01/2007

ORAL JUDGMENT

1. With the consent of the learned Counsel appearing for both the sides, the matter is finally heard today.

2. **Rule**. The learned Counsel appearing for the respondents waive service of notice of rule.

3. The petitioners, who are members of the Society and the occupants/plot holders, have approached this Court for the relief, inter alia, challenging the orders at Annexure A and B passed by the District Panchayat dated 17.10.2003 as well as the order dated 31.5.2004 passed by the State Government in revisional jurisdiction and it is further prayed by the petitioners to direct respondent authority to remove the encroachment and unauthorised construction upon the land of Survey No.49/1 of Village Nandel, Taluka and District Bharuch of the common plot, marginal land of the road and the commercial complex of Shravan School, Ramnagar Society, Pooja Complex, etc. The petitioners have also alternatively prayed that adequate measurement for the payment of compensation and/or providing for sufficiently

large open plot for common facilities to the plot holders be ordered.

4. Heard Mr.A.N.Patel, learned Counsel for the petitioners, Mr.Chhaya, learned AGP for respondents No.1 and 7, Ms.Mandavia, learned Counsel, who has appeared pursuant to the last order dated 18.12.2006, directing the DDO to depute some responsible officer, Mr.Vimal Patel, learned Counsel for respondents No.3 to 6, 8 and 11 and Mr.Mathew, learned Counsel for respondents No.9 and 10.

5. It may be stated that the principal grievance in the present petition is by the occupants/plot holders of the society on the ground that the original land owner/developer/builder has in contravention to the approved lay-out plan, not only made construction over the area of common plot, but it is also contended on behalf of the petitioners, that the revised lay-out plan adversely affecting the existing rights qua the common facilities of the existing plot holders, ought not have been sanctioned by the DDO. It may be stated that earlier the action for

sanctioning of the revised lay-out plan was subject matter of Special Civil Application No.7191/2004 and in the said petition, on 28.12.2005, this Court (Coram: Akil Kureshi, J.) had passed the order, directing the District Development Officer to examine the matter. As no proper actions were taken by the DDO, the present petition has been preferred.

6. This Court, on 11.7.2006, when considered the matter for the first time, passed the following order:-

> " Leave to join the District Collector, Bharuch as party respondent No. 7.
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> 1. Prima facie, it appears that the allegations in the petitions are that, over the common plot No. 1, 2 & 3, total admeasuring 5,500 sq. mtr., illegal constructions are made. Earlier this Court (Coram: Akil Kureshi, J.) by order dated 28.12.2005 passed in Special Civil Application No.7191/2004, directed the District Development Officer to consider the matter for ensuring that the appropriate corrective measures which may include the payment of compensation and/or for providing sufficient large open plot is made available to the residents of the area.

2. Therefore, with a view to see that proper facts come before the Court and the issue can conveniently be examined, **Notice** returnable on 28th July, 2006. By ad-interim order, it is directed that the respondent No. 7, District Collector, Bharuch through Officer not below the rank of the Mamlatdar, shall ensure that the panchnama is prepared of common plot Nos. 1, 2 & 3 as per the revised layout plan and in the said panchnama, any encroachment made over the common plot or any construction made over the common plot shall also be indicated. Such exercise shall be completed before the next returnable date. Until further orders, no construction shall be allowed over the common plot by respondent Nos. 3 & 7 nor shall be permitted over the said common plot Nos. 1, 2 & 3. It will be open to the opponents or any other persons affected thereby to move this Court for early hearing.

D.S. permitted. Office to give a copy of the order to Mr. Mengdey, learned AGP for intimation to the concerned authority."

7. Thereafter, the panchnama was produced on record which, inter alia, provided that the construction has been made over the common plot

Nos.1, 2, and 3, but on a different area. Therefore, on 28.7.2006, this Court passed the following order:-

> " Mr. Mengdey, learned AGP submits the copy of the panchnama drawn in pursuance of the order dated 11.07.2006 passed by this Court inter alia shows 34 sq.mtrs. construction over common plot no. 1, 334 sq.mtrs. construction over common plot No. 2 and 228.50 sq.mtrs. construction over common plot No. 3.
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> Mr. Vimal Patel, learned counsel appearing for respondent Nos. 3 to 6 states that his clients are ready to pay the market value of the area admeasuring 34 sq.mtrs. over which the construction is made in common plot No.1. He further states that so far as common plot no.2 is concerned, the construction over 334 sq.mtrs. is only a flooring, which is upto some level less than the plinth level, which is being used by the students and the members of the society and

he has no objection if that construction is continued or removed. He further states that qua common plot No. 3, the construction admeasuring 228.56 sq.mtrs. is there but, his clients are ready to handover to the members of the society the club house or if they so desire, the same can be removed and his clients have no objection for such purpose.

Mr. Vimal Patel, learned counsel further states that the shortage of area mentioned in common plot No. 2 of 95.25 sq.mtrs. and in common plot no. 3 of 378 sq.mtrs. is not correct and as per his clients, the actual area is available of site. He submits that as the panchnama was not drawn in presence of his clients, the said aspect is disputed. It is submitted that if fresh panchnama is drawn in presence of the petitioners and respondent Nos. 3 to 6, the actual measurement would also come on record.

Mr. A.N. Patel, learned counsel for the petitioners seeks time to get instruction of his client. S.O. to 10th August, 2006. In the meantime, the petitioners and respondent Nos.3 to 6 may undertake the measurement jointly and place the same before this court."

8. Since it was found by the Court that there was no proper measurement undertaken and the learned Counsel appearing for both the sides were also not at consensus on the aspects, which were reflected in the panchnama, the District Collector was added as party together with the other respondents in the main Special Civil Application and on 25.9.2006, this Court passed the following order:-

1. Draft amendment granted. Leave to join the persons whose names are mentioned at para 10.3 of the draft amendment, who are allotted the land bearing part of the common plot Nos.1, 2, and 3.

2. **Notice** to the newly added respondents returnable on 11.10.2006.

3. It is further directed that the District Collector, Bharuch shall ensure that the panchnama of the property which is shown as constructed property in the report of the Mamlatdar is drawn by the Mamlatdar, Bharuch, indicating the persons in occupation and whether the land is purchased by sale deed or any other allotment letter, if any, and the approximate cost of the construction. It is further directed that the District Collector shall ensure that the area of common plot Nos.1, 2, and 3 is measured through office of the District Inspector, Land Records and detailed map is prepared and produced before this Court, showing the exact area and the area over which there is encroachment over the common plot. The aforesaid exercise shall be completed on or before 9th or 10th October, 2006. Respondents No.4 to 6, who are developer and the original owner of the land

shall deposit Rs.5,000/- towards probable cost with the office of the District Collector on or before 29.9.2006. It is made clear that even if there is a delay in depositing the amount of probable cost, earlier direction of measurement shall be complied by the District Collector and in case the amount is not deposited, appropriate order shall be passed at the time when the report is considered.

4. **S O to 11.10.2006** for reporting compliance of the order and to consider the matter for passing appropriate orders."

9. Pursuant to the order passed by this Court a copy of the report by the Mamlatdar to the District Collector dated 10.1.2006 came to be produced which, inter alia, provided for the details of the construction made over the common plot, in contravention to the N.A. Permission and the revised plan. Therefore, taking into consideration the said aspect, on 18.12.2006, this Court passed the following order:-

" Upon hearing Mr. AN Patel for the petitioners, Mr. Chhaya, learned AGP, Mr.

Vimal Patel for respondent Nos. 3 to 6 & 8 and Mr. Joy Mathew for respondent Nos. 9 & 10, it prima facie appears from the map which is produced by Mr. Chhaya together with the report dated 10.10.2006 qua three encroachments over the COP No.1 admeasuring 34 sq. mtr., over COP No.2 admeasuring 318 sq. mtr., and over COP No.3 admeasuring 100.12 sq mtr. The valuation is made but such valuation is with the construction. The total amount as per the valuation is about Rs. 22 lakhs including the construction whereas the valuation of the land as such would be required to be considered. Mr. Vimal Patel for the concerned respondent who have developed the society declared before the Court that even if this Court is inclined to take the view that the valuation of the land may be roughly of 50%, then instead of directing the respondent Nos.3 to 6 to deposit the amount of Rs.10 Lakhs, the respondent Nos.3 to 6 are ready to surrender the land admeasuring 379 sq. mtrs. towards COP No. 3 and land admeasuring 132 sq. mtrs. towards

COP No.1 and is also ready to deposit the amount of Rs. 5 Lakhs which may be towards the value of the land over which the unauthorised construction as per the report of the Mamlatdar are made.

As such, District Development Officer would be the concerned party and though they are served, nobody has appeared. It appears that as against the unauthorised utilisation of the land of common plot, if additional area of 379 sq. mtrs. qua the common plot No.3 and 132 sq. mtrs. qua COP No.1 is surrendered by respondent Nos. 3 to 6 and are directed to deposit amount of Rs. 5 Lakhs by interim order towards loss of land of common plot to the plot holders of the Society, the same would be just and proper.

Hence, by interim order it is further directed that no construction shall be made or permitted over the land of 379 sq. mtrs. adjacent to COP No.3 and land admeasuring 132 sq. mtr. adjacent to COP No. 1 and respondent Nos. 3 to 6 shall further deposit

the amount of Rs. 5 Lakhs with this Court on or before 15th January, 2007.

It is further directed that the District Development Officer shall depute an officer not below the rank of Deputy Development Officer who may be well versed with the facts of the present case with the relevant record. If the instructions are passed over to the advocate, who is to appear in the matter on behalf of the District Development Officer, the presence of the officer may not be required. D.S. for respondent No.2."

10. Thereafter, on behalf of the DDO, Ms.Mandavia, learned Counsel has appeared and Mr.Vimal Patel, learned Counsel also declared before the Court that the amount of Rs.5 lac is already deposited by Respondents No.3 to 6 on 10.1.2007.

11. Under the above circumstances, it appears that as per the report of the Mamlatdar, the construction is made over the land of the common plot and, therefore, as per the declaration made and recorded in the order dated 18.12.2006, the

original land owners, who are represented through Mr.Vimal Patel are ready to surrender the area admeasuring 379 sq. mtrs. qua plot No.3 and 132 sq. mtrs. qua common plot No.1, the matter may be required to be considered for approval of revised lay-out plan by the DDO or otherwise. Further, qua the remaining portion of the land of common plot, which has been deprived of to the occupants/holders of the plot and since it was also observed by this Court in its judgement dated 28.12.2005 in SCA No.7191 of 2004, the matter may be required to be considered by the DDO for compensating the existing occupants/plot holders, as observed earlier, tentatively the amount of Rs.5 lac has been deposited, which can be made use towards the creation of additional common facilities to the occupants of the plots in view of the deprivation of the portion of the land of the common plot by the original land holders. However, such aspects can conveniently be examined by the DDO while exercising the power for sanctioning revised lay-out plan of N.A. and

it appears that if the matter is referred to the DDO for such purpose, it would be just and proper to resolve the issue for providing the other additional land in light of the utilization of the land of common plot by the original owner and also for compensating qua the deprivation of the common facilities of the remaining area of the common plot. Until such exercise is completed, if the present arrangement made pending the present proceedings is allowed to continue, it would not cause any serious prejudice to the parties.

12. Under the above circumstances, I find that the following directions shall meet with the ends of justice:-

(a) The respondents No.3 to 6 and 8 shall submit the revised lay-out plan to DDO for the preservation and maintenance of the common plot after surrendering the area as recorded in the above referred order dated 18.12.2006 and by showing the willingness to pay appropriate compensation for the remaing

area of the common plot to the existing plot holders/occupants of the Society, within a period of four weeks from today.

(b) After the aforesaid application is made for sanctioning of the revised lay-out plan, the DDO shall consider the matter in accordance with law in light of the observations made by this Court in the present order read with the earlier order dated 28.12.2005 in SCA No.7191 of 2004 and shall also give opportunity of hearing to the petitioners and other parties to the present petition and shall passed appropriate orders, as early as possible, preferably within a period of three months from the making of such application.

(c) The DDO shall withdraw the amount of Rs.5 lac (Rupees five lac only) deposited with this Court pursuant to the order dated 18.12.2006 and shall deposit the amount in a separate bank account in fixed deposit

receipt with any nationalized bank. It would be open to the DDO to permit the utilization of the amount as per the final order, which may be passed by him while considering the revised lay-out plan. It is clarified that in the event the decision is taken by the DDO to award more compensation, the original owners shall be required to deposit the same within a period of one month from the date of passing of such order, subject to the adjustment of Rs.5 lac already deposited.

(d) Until the aforesaid exercise is undertaken by DDO and appropriate order is passed by D.D.O., the interim relief granted in the present proceedings prohibiting any construction over the open land of the common plot shall continue to remain in operation.

13.The petition is partly allowed in terms of the aforesaid directions. Rule made absolute

accordingly. Considering the facts and circumstances, there shall be no order as to costs.

16.1.2007 **(Jayant Patel, J.)**

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